

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Troy Ristau
Tonya Ristau

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 13, Case No. 04-42482

TO: Troy Ristau and Tonya Ristau, INCLUDING TRUSTEE AND OTHER INTERESTED
PARTIES

1. Wells Fargo Bank, N.A., (*Movant*), a corporation, by its undersigned attorneys,
moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 2:00 pm on November 4, 2004, in
Courtroom 8 West, 301 U.S. Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 or
as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on
November 1, 2004, which is three days before the time set for the hearing (excluding Saturdays,
Sundays, and holidays), or filed and served by mail not later than October 26, 2004, which is
seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY
GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and
1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on May 3, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtors.

6. Debtors above-named are the owners of certain real property located at 1028 Kaylee Street, Chaska, MN 55318, legally described as follows, to-wit:

Lot 3, Block 8, Riverwoods, Carver County, Minnesota

7. The indebtedness of Troy Ristau and Tonya Ristau is evidenced by a Promissory Note and Mortgage dated June 26, 2002, filed of record in the Carver County Recorder's office on July 8, 2002, and recorded as Document No. A319596. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors were current on their mortgage obligation to Movant at the time of the bankruptcy filing. Movant has not filed a Proof of Claim nor receiving payments from the Trustee.

9. Pursuant to said Plan, the Debtors were to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtors have failed to pay the monthly payments on the indebtedness, outside the Plan for the months of August 1, 2004 to the present date and as of the hearing date November 1, 2004 will be due for a total delinquency of \$3,882.90 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtors are in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: October 18, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

IN RE:

Troy R. Ristau
Tonya M. Ristau

AFFIDAVIT OF PETITIONER

Debtors

Chapter 13, Case No. 04-42482

STATE OF GEORGIA

COUNTY OF FULTON

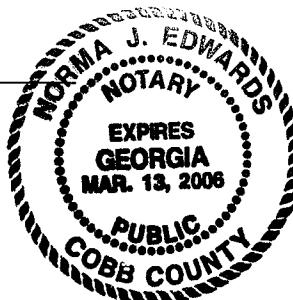
Chris Robertson, being first duly sworn, deposes and states He is authorized representative of Movant and has direct real-time access to the computer records of Movant which are maintained in the ordinary course of business and that He has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of His knowledge to the best of His information.



Subscribed and sworn to before me this
24th day of September, 2004.



Notary Public



Registration tax hereon of \$ 347.74 paid
this 8th day of July 2002
Treasurer's Receipt No. by D. Minnehan
D.F. Wahlke
County Treasurer

Countersigned
Mark Lundgren
County Auditor
by Tim Spencer

Document No.

A319596



Certified filed and recorded on 07-08-2002 at 10:30 ☒ AM ☐ PM



07-08-02

OFFICE OF THE
COUNTY RECORDER
CARVER COUNTY, MINNESOTA

Filing Fee \$ 20.00 Check# 143567

DS
Carl W. Hanson, Jr.
County Recorder

[Space Above This Line For Recording Data]

State of Minnesota

MORTGAGE

FHA Case No.

271-8738173 703

THIS MORTGAGE ("Security Instrument") is given on JUNE 26, 2002
The Mortgagor is Troy R. Ristau and Tonya M. Ristau, husband and wife

("Borrower"). This Security Instrument is given to WELLS FARGO HOME MORTGAGE, INC.

which is organized and existing under the laws of THE STATE OF CALIFORNIA
whose address is P.O. BOX 5137, DES MOINES, IA 503065137

, and

("Lender"). Borrower owes Lender the principal sum of
ONE HUNDRED FIFTY ONE THOUSAND ONE HUNDRED NINETY TWO AND 00/100

Dollars (U.S. \$*****151,192.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on JULY 01, 2032

and for interest at the yearly rate of 5.250

percent. This Security

Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals,
extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph
7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements

0349015

FHA Minnesota Mortgage - 4/96

4R(MN) (8702)

Page 1 of 8

Initials TRR

VMP MORTGAGE FORMS (800) 521-7791

T.M.



under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to the Lender, with power of sale, the following described property located in **CARVER** County, Minnesota:

LOT 3, BLOCK 8, RIVERWOODS

***SEE ADJUSTABLE RATE RIDER**

THIS IS A PURCHASE MONEY SECURITY INSTRUMENT.

TAX STATEMENTS SHOULD BE SENT TO: WELLS FARGO HOME MORTGAGE, INC., P.O. BOX 5137, DES MOINES, IA 503065137

which has the address of **1028 KAYLEE STREET, CHASKA**
Minnesota **55318**

[Street, City],
[Zip Code] ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

Borrower and Lender covenant and agree as follows:

UNIFORM COVENANTS.

1. Payment of Principal, Interest and Late Charge. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and late charges due under the Note.

2. Monthly Payment of Taxes, Insurance and Other Charges. Borrower shall include in each monthly payment, together with the principal and interest as set forth in the Note and any late charges, a sum for (a) taxes and special assessments levied or to be levied against the Property, (b) leasehold payments or ground rents on the Property, and (c) premiums for insurance required under paragraph 4. In any year in which the Lender must pay a mortgage insurance premium to the Secretary of Housing and Urban Development ("Secretary"), or in any year in which such premium would have been required if Lender still held the Security Instrument, each monthly payment shall also include either: (i) a sum for the annual mortgage insurance premium to be paid by Lender to the Secretary, or (ii) a monthly charge instead of a mortgage insurance premium if this Security Instrument is held by the Secretary, in a reasonable amount to be determined by the Secretary. Except for the monthly charge by the Secretary, these items are called "Escrow Items" and the sums paid to Lender are called "Escrow Funds."

Lender may, at any time, collect and hold amounts for Escrow Items in an aggregate amount not to exceed the maximum amount that may be required for Borrower's escrow account under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. Section 2601 *et seq.* and implementing regulations, 24 CFR Part 3500, as they may be amended from time to time ("RESPA"), except that the cushion or reserve permitted by RESPA for unanticipated disbursements or disbursements before the Borrower's payments are available in the account may not be based on amounts due for the mortgage insurance premium.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Troy Ristau
Tonya Ristau

MEMORANDUM OF LAW

Debtors

Chapter 13, Case No. 04-42482

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtors' filing of the petition on May 3, 2004 no payment has been made to movant for the month(s) of August 1, 2004 to the present and as of the hearing date November 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Wells Fargo Bank, N.A. respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: October 18, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Troy Ristau
Tonya Ristau

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-42482

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on October 18, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building, 12 South 6th Street
Minneapolis, MN 55402

Gregory J. Wald, Esq.
Attorney at Law
3601 Minnesota Drive, Ste. 800
Edina, MN 55435

Troy Ristau
Tonya Ristau
1028 Kaylee Street
Chaska, MN 55318

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Troy Ristau
Tonya Ristau

ORDER

Debtors.

Chapter 13, Case No. 04-42482

The above entitled matter came on for hearing upon motion of Wells Fargo Bank, N.A., (*Movant*) pursuant to 11 U.S.C. Section 362 on November 4, 2004 at the U.S. Bankruptcy Court, Minneapolis, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 3, Block 8, Riverwoods.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this ____ day of _____, 2004.

Judge of the Bankruptcy Court